

Panaji, 21st August, 2014 (Sravana 30, 1936)

SERIES II No. 21

OFFICIAL GAZETTE



GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 20 dated 14-08-2014 namely, Extraordinary dated 18-08-2014 from pages 421 to 422 regarding Notifications from Department of Elections (Goa State Election Commission).

GOVERNMENT OF GOA

Department of Education, Art & Culture

Directorate of Technical Education

College Section

Order

No. 16/326/SSR/PF/DTE/2014/1356

Read: Memorandum No. 16/139/Fill-Posts/GEC/
/DTE/PFIV/729 dated 19-06-2014.

On the recommendations of the Goa Public Service Commission conveyed vide their letter No. COM/I/5/18(2)/2012/561 dated 19-05-2014, Government is pleased to appoint Shri Suraj Surendra Rane on temporary basis to the post of Professor in Mechanical Engineering (Group 'A', Gazetted) at Goa College of Engineering, Farmagudi, Ponda-Goa, with initial pay fixed at ` 43,000/- in the Pay Band of ` 37,400-67,000 plus Academic Grade Pay ` 10,000/- w.e.f. the date of joining as per the terms & conditions contained in the Memorandum cited above.

The appointment is against the post of Professor in Mechanical Engineering created vide order No. EDN/6/TECH/66 dated 03-09-1966 revived vide order No. 16/250/Creation & Revival of posts of GEC/DTE/10/2405 dated 12-07-2010 and subsequently revived vide order No. 16/250/Creation & Revival of posts of GEC/DTE/10/756 dated 18-06-2013 (Non Plan-second post at Sr. No. 2).

Shri Suraj Surendra Rane will be on probation for a period of two years.

He should join duties within 30 days of the receipt of this order, failing which this order is liable to be cancelled without further notice.

He has been declared fit by Medical Board, Goa Medical College & Hospital, Bambolim vide certificate No. 4/105/85-H/GMC/2014/278 dated 03-07-2014. His character and antecedents have been verified and nothing adverse is reported against him as conveyed by the Additional District Magistrate, South Goa, Margao-Goa vide letter No. 2014/555/2/MAG/154/6177 dated 30-07-2014.

By order and in the name of the Governor of Goa.

Vivek B. Kamat, Director & ex officio Additional Secretary (Technical Education).

Porvorim, 5th August, 2014.

Order

No. 16/323/PF/NBG/GEC/DTE/14/1357

Read: Memorandum No. 16/139/Fill-Posts/GEC/
/DTE/PF-IV/425 dated 26-05-2014.

On the recommendations of the Goa Public Service Commission conveyed vide their letter No. COM/I/5/18(4)/2012/443 dated 12-02-2014, Government is pleased to appoint Shri Nitesh Bhicu Guinde on temporary basis to the post of Assistant Professor in Electronics & Telecommunication Engineering (Group 'A', Gazetted) at Goa College of Engineering, Farmagudi, Ponda-Goa, with initial pay fixed at ` 37,400/- in the Pay Band of ` 37,400-67,000 plus Academic Grade Pay ` 9,000/- w.e.f. the date of joining as per the terms & conditions contained in the Memorandum cited above.

The appointment is against the post of Associate Professor in Electronics and Telecommunication Engineering created vide

order No. 16/250/Creation & Revival of posts of GEC/DTE/10/2403 dated 12-07-2010 and subsequently revived vide order No. 16/250/Creation & Revival of posts of GEC/DTE/10/756 dated 18-06-2013 (Non Plan-first post at Sr. No. 17).

Shri Nitesh Bhicu Guinde will be on probation for a period of two years.

He should join duties within 30 days of the receipt of this order, failing which this order is liable to be cancelled without further notice.

He has been declared fit by Medical Board, Goa Medical College & Hospital, Bambolim vide letter No. 4/105/85-H/GMC/2014/267 dated 30-06-2014. His character and antecedents have been verified and nothing adverse is reported against him as conveyed by the Additional District Magistrate, South Goa, Margao-Goa vide letter No. 2013/24412/2/MAG/151/6180 dated 30-07-2014.

By order and in the name of the Governor of Goa.

Vivek B. Kamat, Director & ex officio Additional Secretary (Technical Education).

Porvorim, 5th August, 2014.

Polytechnic Section

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Order

No. 17/3/28/2008/DTE/1392

Approval of the Government is hereby conveyed for acceptance of notice of voluntary retirement under Rule 48(A)(1) of CCS (Pension) Rules, 1972, read with F.R. (56)(k) with effect from 08-08-2014 (f.n.) in respect of Smt. Pallavi K. Kelekar, Lecturer in Mechanical Engineering, Government Polytechnic, Panaji.

Smt. Pallavi K. Kelekar shall stand relieved from her duties with effect from 08-08-2014 (f.n.) from the post of Lecturer in Government Polytechnic, Panaji.

By order and in the name of the Governor of Goa.

Vivek B. Kamat, Director & ex officio Additional Secretary (Technical Education).

Porvorim, 7th August, 2014.

Goa Board of Secondary and Higher Secondary Education

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Order

GBSHSE/EST/RTI-ORDER/2014/1672

In pursuance of the provisions of the R.T.I. Act, 2005 under Sections 5(1) & 5(2), the following officer mentioned in column 3 is appointed as APIO and in column 4 is appointed as PIO and that in column 5 will be First Appellate Authority.

Sr. No.	Area of jurisdiction	APIO	PIO	First Appellate Authority
1	2	3	4	5
1.	Goa Board of Secondary and Higher Secondary Education, Alto-Betim, Goa	Assistant Secretary (SSC)	Joint Secretary (Academic)	Chairman.

The order shall come into force with immediate effect.

J. R. Rebello, Chairman.

Alto-Betim, 6th August, 2014.

V. No. A-8808/2014.

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Goa Legislature Secretariat

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Notification

No. LA/MAINT/1078/2014

In exercise of the powers vested in me by Rule 269 of the "Rules of Procedure and Conduct of Business of Goa Legislative Assembly" I declare that Shri Manohar Parrikar, Hon'ble Chief Minister, Government of Goa has laid the following documents on the Table of the House on the 23rd July, 2014.

1. Report of the Comptroller and Auditor General of India for the year ended 31st March, 2013.
2. State Finances for the year ended 31st March, 2013.
3. Appropriation Accounts 2012-13.
4. Finance Accounts 2012-2013 Volume-I.
5. Finance Accounts 2012-2013 Volume-II.

Assembly Hall,
Porvorim-Goa,
7th August, 2014.

N. B. Subhedar
Secretary,
Legislative Assembly.

Department of Labour

Notification

No. 28/1/2013-Lab/664

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 26-08-2013 in reference No. IT/23/98 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Meena Priolkar, Under Secretary (Labour).

Porvorim, 27th September, 2013.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

(Before Ms. Bimba K. Thaly, Presiding Officer)

Ref. No. IT/23/98

Shri Luis D. J. Gomes,
Opp. St. Annes Church,
Upper Bazaar,
Ponda, Goa
V/s

.... Workman/Party I

The Managing Director,
M/s. Mandovi Pellets Ltd.,
Near Borim Bridge,
Shiroda, Goa

.... Employer/Party II

Workman/Party I present at the time of evidence and absent at the time of arguments.

Employer/Party II represented by Adv. Shri P. Chawdikar.

AWARD

(Passed on this 26th day of August, 2013)

By order dated 3-4-1998, bearing No. IRM/CON/PONDA/(126)/97/8226, the Government of Goa in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of The Industrial Disputes Act, 1947 (for short The Act) has referred the following dispute for adjudication.

1. Whether the action of the management of M/s. Mandovi Pellets Ltd., Near Borim Bridge, Shiroda Goa, in terminating the services of its Workman, Shri Luis D. J. Gomes, "Foreman" with effect from 6-1-1997 is legal and justified?

2. If not, to what relief the Workman is entitled?"

2. Upon receipt of the reference, a case was registered under No. IT/23/98 and registered AD notices were issued to both the parties and upon service, Party I filed the claim statement at Exb. 4 and Party II filed the written statement at Exb. 5. Party I then filed the rejoinder at Exb. 6.

3. In the claim statement it is the case of Party I that he joined the services of Party II as an Asstt. Foreman by appointment letter dated 7-11-91 w.e.f. 18-11-1991. That his duty consisted of looking after the ship work, carrying out electrical repairs of the shop floor, maintenance and repairs of motors, carrying out repairs on lamination attending the machine bread down and carrying out the repairs of ship-unloader, stacker reclaimers, stacker/reclan, barge, unloader, tower light etc... It is stated that Party I was actually carrying out the repair and maintenance work and was reporting to the area supervisor and the manager. It is stated that Party I was a workman and that he had no authority to draw any materials from the store. It is stated that his last drawn salary was Rs. 5000/- per month. It is stated that by letter dated 4-1-97 Party I was advised by Party II not to attend the duty without assigning any reasons and that such refusal amounted to illegal termination of service. It is stated that no enquiry of whatsoever nature was carried out before termination of services of Party I. It is therefore the contention of Party I that such termination without complying with the provisions of law is illegal, unjustified and against the principles of natural justice. Thus Party I raised the dispute before the management by letter dated 14-1-1997 which was replied by the management alleging that Party I was guilty of grievous misconduct committed by him and justified the termination of his services. It is stated that thereafter the dispute was raised before the Asstt. Labour Commissioner, Ponda. However, the matter ended in failure. It is stated that the charges levelled by Party II are false, bogus and misleading and that Party II ought to have initiated the enquiry proceedings to prove the charges of misconduct alleged against Party I. Hence Party I has prayed to hold that the action of the management in terminating his services as illegal and unjustified and to direct the management to reinstate him his services with continuity of services and all the back wages, along with other reliefs.

4. In the written statement Party II has denied the case set up by Party I and has in short stated that Party I was not a Workman under the Act; that

he was a Supervisor designated as a Foreman and in such capacity he occupied a position of command and took independent decisions and was authorized to act independently in certain matters without the sanction of the superiors. It is stated that Party I had Workmen working under him and he distributed the work among his subordinates and exercised control over them. It is stated that Party I operated as shift incharge and issued gate passes, retained petty cash and indented the requisitioned material from the store so also advised disciplinary actions over his subordinates and dealt with late attendance in the matter of subordinates. It is stated that Party I distributed work in every shift, requisitioned manpower and overtime. Thus, according to Party II the main and principle nature of duties of Party I were of supervisory character. It is also the case of Party II that Party I was reporting to the Manager of the Department and that he was not reporting to any supervisor as he himself was a supervisor designated as Foreman. It is stated that in their reply dated 21-1-97 sent to the letter of Party I dated 14-1-97, Party II has stated in detail the misconducts committed by Party I which are of refusing to sign the late register as requested by the Shift Engineer, Mr. Cernik Furtado, of abusing said Shri Furtado in vulgar and defamatory language so also physically assaulting him with blows on his face and kicks on his body. Thus, according to Party II considering the gravity of misconducts committed by Party I, the management lost confidence in Party I and therefore it was not in the larger interest of organization to retain Party I in service. Hence his services were terminated in terms of clause 9 of his appointment letter dated 7-11-91. It is stated that the termination is just, legal and proper and therefore the reference deserves to be rejected.

5. In the rejoinder at Exb. 6, Party I has denied the contentions raised by Party II in the written statement and has asserted its case set up in the claim statement.

6. Based on the pleadings of both the parties, issues were framed on 22-9-98 (Exb. 7).

7. In support of his case Party I, Shri Luis Gomes examined himself as witness No.1 and Shri Jayantibhai Patel as witness No. 2. On the other hand Party II examined its Manager (Electrical) Mr. Ramakant P. Naik and Mr. Dnyanesh Sirsat and closed their case.

8. Party I did not appear before this court nor was represented, when the matter was heard in arguments. However Ld. Adv. Shri P. Chawdikar

advanced argument on behalf of Party II. The written submissions of Party II are on record at a Exb. 25.

9. I have gone through the records of the case and have duly considered the arguments advanced by Ld. Adv. for Party II. I am reproducing herewith the issues along with their findings and reasons thereof.

Sr. No.	Issues	Findings
1.	Whether the Party I proves that the action of Party II in terminating his services w. e. f. 6-1-97 is illegal and unjustified?	Does not arise.
2.	Whether the Party II proves that the Party I is not a workman as defined under the I. D. Act, 1947 and hence reference is not maintainable?	In the positive.
3.	Whether the Party II proves that termination of services of Party I is in accordance with clause (9) of appointment letter dated 7-11-97?	Does not arise.
4.	Whether the Party I is entitled to any relief?	In the negative.
5.	What Award?	As per order below.

REASONS

10. Before advertizing myself to the discussion on the merits of the issues, it is worthwhile mentioning that the basic issue is about the status of Party I i.e. if he is a Workman or otherwise. This is because reading of the pleadings of the parties make it clear that it is the categorical case of the Party I that he is a Workman and according to Party II, Party I was a Supervisor designated as a Foreman and in such capacity was a non Workman. Thus, if it is established that Party I is a workman it is only then the decision on issue Nos. 1 & 3 would be material which is otherwise if it is held that Party I falls in the category of non Workman. It is a therefore required to give findings on issue No. 2 before answering the other issues. It may be mentioned here that the burden of proving that he is a workman lies on Party I though issue No. 2 has been framed casting such burden on Party II. In the above context I would refer to the judgment in the case of

S. T. Galande v/s P. O. Hind Labour Court 2008 (I) CLR 656 in which the Hon'ble High Court of Bombay has observed as under:

"..... It is settled principle of law that the onus lies upon the workman to prove that he satisfies the essential ingredients of being a workman and, therefore, could raise an industrial dispute....."

11. Further, in the judgment in the case of **H. R. Adyanthaya and others v/s Sandoz (India) Ltd., 1994 II CLR 552** the constitution bench of the Hon'ble Supreme Court has held as under;

".....a person to be a workman under the said act must be employed to do the work of any category, viz. manual, unskilled, skilled operational, clerical, supervisory (drawing less than Rs.1,600/- p.m.) or technical. It is not enough that he is not covered by either by the four exceptions to the definition."

12. Thus, from the above settled propositions of law it becomes clear that the person claiming to be a "Workman" must come within the ambit of first part of definition of Section 2(s) of the Act and that the burden to establish the same lies on the Workman.

13. In his arguments Ld. Adv. for Party II submitted that though Party I in his evidence has spoken about the duties performed by him which are of manual/skilled/technical nature, to bring him within the definition of Section 2(s) of the Act, in his cross examination the actual dominant nature of duties performed by him is brought on record and which makes it clear that Party I was not a workman. He stated that what has to be considered to find out if the person concerned is a Workman or not is the major part of the duties performed by him and not the duties incidental to the main work, done by him.

14. In support of his above submissions Ld. Adv. for Party II relied on the judgments in the case of **Bishwa Ram Ojha v/s The Management of Tata Iron and Steel Company Ltd., MANU/JH/0341/2009, German Remedies Ltd., v/s Micheal Gabriel Lopes and another 1999 (2) LLN 1999, Harish G. Zode v/s Managing Director Vacuum Plant and Instruments Manufacturing 2000 I CLR 815, Mr. A. K. Patel v/s the Indian Hotels Co. Ltd., MANU/MH/0120/2005, Shrikant Vishnu Palwankar v/s Presiding Officer, first Labour Court & Another 1992 II LLJ 378 and The Union Carbide (India) Ltd., Ramesh Kumbha & ors 1999 (1) Bom.C. R. 705.** Ld. Adv. for Party II made it clear

that the observations in the above judgments clearly indicate the nature of duties required to be performed by an employee to come within the ambit of Section 2(s) of the Act.

15. In his evidence Party I, Shri Luis Gomes has stated that in the electrical workshop he was doing the work of dismantling of electrical motors replacing the bearings of motors, assembling the motors sent for rewinding, giving three phase connection to the welding machine in the plant, replacing the burnt wires/cables, replacing fuse contactors, relays, filling oil in the transformers etc. However, in his cross examination he has made it clear that he was the only person working as a Foreman with Party II. It is also brought on record in his cross examination that whenever any accident took place in the factory he made the report to that effect and he has identified his signature on the accident report dated 4-12-93 (Exb.E-2). He has stated that this form which is a Primary Report on accident, has to be filled in if an accident takes place in the establishment. He has also identified his signature on the overtime requisition slips dated 1-4-96, 10-4-96, 14-4-96, 18-4-96, 24-4-96, 20-5-96, 31-5-96, 12-6-96, 3-7-96, 17-7-96 at Exb.E-3 colly as well as dated 1-4-96, 10-4-96, 14-4-96, 18-4-96, 24-4-96, 20-5-96, 31-5-96, 12-6-96, 3-7-96, 17-7-96 and 19-7-96 at Exb. E-14 colly. By referring to the above documents at Exb. E-3 colly and E-14 colly Party I has made it clear that these slips are in his handwriting so also that he has requisitioned the said overtime slips.

16. It further becomes clear from the evidence of Party I that if any employee was late in reporting for work, the Time Office reported the matter to the Foreman and this report is made in a form. Upon being shown the late attendance form dated 21-10-95 (Exb.E-4) of one Mr. C. X. Godinho, Party I has admitted that his advice on the subject of Mr. Godinho reporting late for duties was sought and he has remarked as "OK" meaning thereby the concerned employee had come late and was allowed to report for duty. Upon being shown the late attendance form dated 20-9-96 of one Mr. Kishore Naik at Exb.E-5 and dated 10-11-96 of one Mr. Hemant B. Naik at Exb.E-6, Party I has stated of having put the relevant remarks on the same and has made it clear that the late attendance forms are filled in by the Time Office and given to the concerned employees who bring the same to their place of work and that Exb. E-4, E-5 and E-6 were handed over to him by the concerned employees. He has also made it clear that the aforesaid persons who were working in the electrical workshop had

handed over to him the above forms and that only the Asstt. Electrician and the Helpers come to him with such late attendance forms, if they are late in reporting for duties.

17. Upon being shown a letter dated 30-4-96 (Exb.E-7) Party I has admitted that he had written the same to the Time Office for allowing one Mr. G.S. Gaonkar to take his child to the doctor. Party I was also shown a letter dated 28-9-96 at Exb.E-8 and he admitted that he wrote the said letter to the Time Office to allow one Mr. Dhaku Naik to go out for official work. Further, upon being shown a letter dated 22-10-96 at Exb. E-9, Party I has admitted that he wrote the same to the Time Office to allow Mr. Fondu Naik, an electrician to go to the State Bank of India at Shiroda. Upon being shown a letter dated 17-4-96 at Exb. E-10, Party I has admitted of having written the same to the Time Office to allow one Mr. S. B. Naik an electrician to take half day leave on that day and to leave the plant at 10:00 am. Upon being shown a letter dated 31-1-96 at Exb. E-11 Party I has admitted of having written the same to the Time Office bringing to their notice that one Mr. G. K. Chari had reported to him that he had punched the card wrongly. Upon being shown a letter dated 2-8-96 at Exb. E-12, Party I has admitted of having written the same to the Time Office stating that one Mr. S.G. Naik an electrician had reported to him that he has mistakenly punched the card of another employee. Party I has stated that sometimes the employees changed the shift mutually and in this context he was shown a letter dated 15-12-95 at Exb. E-13 whereupon Party I has admitted that this letter was handed over to him by one Mr. A. M. Tendulkar informing that he would attend the second shift instead of first and Mr. G. K. Chari would attend the third shift instead of second on 16-12-95. Party I has admitted of having put remark as "OK" on this letter above his signature.

18. Perusal of Exb. E-2 makes it clear that Party I has signed the same in his capacity as Supervisor by writing his name as Supervisor and designation as Foreman. In his arguments Ld. Adv. for Party II made it clear that the Accident report forms like the one at Exb.E-2 are required to be the Factories Inspector within 24 hours of occurrence of the accident otherwise it is a criminal offence. He stated that the responsibility of making such report is given to the person in charge of the shift and since Party I was working in the supervisory capacity the burden of making such report was cast on him which he used to do. I find force in the above submissions of Ld. Adv. for Party II for the reasons that a person doing the work of manual or technical

nature would not be made responsible for forwarding such forms to the Factories Inspector and therefore the very fact that Party I sent the form at E-2 by signing on the same as Supervisor makes it clear that Party I falls in the category of non Workman. Ever for that matter, it is apparent from Exb. E-3 colly as well as Exb. E-14 colly which are the overtime requisition slips of various employees that Party II has signed the same as requisitioning authority. It cannot be disputed that the persons working overtime are paid accordingly and therefore such slips requisitioning the overtime bind the management to pay the persons working overtime as per the actual overtime they worked. This therefore makes it clear that a duty is cast on the requisitioning authority to inform the management the correct and accurate details about the persons working overtime. Thus, the above duty performed by Party I is apparently of exercising control over the subordinates and is of supervisory nature. As regards the late attendance forms at Exb. E-4, Exb.E-5 and Exb. E-6 as rightly pointed out by Ld. Adv. for Party II the concerned employees were allowed to work despite coming late only after the remark to the required effect was put by Party I and this intun indicates the nature of control exercised by Party I over his subordinates who are apparently the Asstt. Electricians and Helpers. Further, Exb.E-7 also makes it clear that it was only upon the recommendation of Party I as shift incharge, Mr. G. S. Gaonkar was allowed to leave the establishment so also Exb.E-8 makes it clear that upon the recommendation of Party I as Shift Foreman Mr. Daku Naik was allowed to go out for official work. Similar is the case with Exb. E-9 whereupon Mr. Fondu Naik was allowed to go to SBI Bank at Shiroda and as per Exb.E-10 recommended by Party I as Shift Foreman Mr S.G. Naik was allowed to take the leave as stated in the said letter. Further in terms of Exb. E.-11 signed by Party I the mistake committed in wrongly punching the card by Mr. G. K. Chari was ordered to be corrected and similar is the case with Exb.E-12 with respect to Mr. S. G. Naik which is signed by Party I as Shift in charge. Even for that matter, vide Exb.E-13 the request made by Shri A.M. Tendulkar for exchange of the shift with one Mr.G.K. Chari has been accepted by Party I by putting the remark as "OK". To my mind, the above powers exercised by Party I are definitely not in his capacity as a person doing clerical, manual or technical work but by the person being in charge of the shift and the one exercising control and supervision over his subordinates.

19. In his evidence Party I has stated the nature of duties performed by him (which are mentioned in para 15 above) but it deserves to be noted that according to Party I while doing the said work he was being assisted by the helpers. It is equally correct that according to Party I he was doing this work as per the directions of Sight Engineer, Area Engineer and Junior Engineer and that the helpers were being sent by the Managers. Party I has stated that he used to enter the work done by him in shift record book and has produced copy of such books dated 31-3-96 and 14-8-95 at Exb. W-3 colly. He has stated that whatever material was required, was obtained by getting requisition slip signed by the authorized officer in advance and he has produced copy of such slip dated 15-7-97 at Exb.W-4. Nevertheless, from the nature of statements brought on record in the cross examination of Party I which clearly indicate the supervisory work done by Party I, it becomes clear that the dominant work done by Party I was supervisory and therefore the above statements of Party I are of assistance to say that Party I is a workmen.

20. The witness of Party I namely, Shri Jayantibhai Patel was working in the Mechanical Department of Party II and he retired from service in the year 1999. He has stated that Party I was working as an Electrician in the Electrical Departments and that the Electrical and Mechanical Departments were looking after the Maintenance of loading and unloading machinery. He has stated that Party I was doing the electrical maintenance work; that he used to disconnect electricity supply to enable the mechanics from the mechanical department to carry out their work and then used to reconnect the electricity supply. He has stated of having seen Party I doing the work of removing carbon from the motors, changing bearings, changing fans and doing other repair works in the electrical workshop and according to him Party I was workman. In his cross examination Shri Patel has stated that he was retired from service compulsorily but has denied the suggestion that he has deposed falsely against Party II because he was compulsorily retired from service. He has denied the suggestion that Party I was doing the work of supervision.

21. It may be mentioned here that the evidence of Shri Patel has to be accepted with great caution because admittedly he was retired from service compulsorily and therefore the chances of Shri Patel deposing against Party II, cannot be ruled out. That apart, though Shri Patel has tried to impress upon the court that the nature of the duties performed by Party I were of technical/manual nature, he has

conveniently avoided to speak about the other duties which are apparently of supervisory nature and which are admitted by Party I in his cross examination. Thus, to my mind even, if it is accepted that the duties as stated by Shri Patel as performed by Party I were of technical/manual nature, the same in the light of the statements brought on record in the cross examination of Party I (relating to the duties of supervisory nature) cannot be considered as the main duties of Party I. Being so, the evidence of this witness is of not much assistance to the Party I to advance his case of he being a workman.

22. Shri Ramakant Naik the witness of Party II has reiterated the pleas taken by Party II in the written statement. In his cross examination it is brought on record that Party I with the help of electrician used to carry out the repairs of ship unloader, stacker, reclaimers, barge unloader and tower lights. No doubt, the nature of above work appears to be manual but as observed in the judgments relied upon *Ld. Adv. Party II*, the primary duties performed by Party I are required to be considered and not the duties incidental to the main work, to find out the actual nature of duties performed by Party I. It is further brought on record in the cross examination of Shri Naik that the company maintains the list of supervisory staff and he was shown such list dated 21-3-98 at Exb.18. This witness has stated that he is not aware whether the name of Party I does not figure in any of the lists of supervisory staffs prepared from the year 1994. He has stated that he does not have the list of supervisory staff from the year 1994 onwards. It may be mentioned here that Party I was appointed as Asstt. Foreman by letter dated 7-11-91 at Exb. W-1 and subsequently he was confirmed in the services as Foreman vide letter dated 7-1-93 at Exb.W-2. The Party I was relieved from services vide letter dated 6-1-97 at Exb.W-7. Undoubtedly, Exb. 18 is dated 21-3-98 and it pertains to the list of supervisory staff authorized for inspection of material and signing stores issue-chits. Thus, at no stretch of imagination Exb.18 which is of the year 1998 could show the name of Party I who was relieved from services way back in January, 1997.

23. In the judgment in the case of **Bishwa Ram (supra)** it is observed that the test to find out whether the employee is a workman or not is to see the nature of primary or substantial duties which the Party is assigned to perform. This judgment also makes it clear that a person indisputably carries on supervisory work if he has power of control or supervision.

24. Also in the judgment in the case of **Harish G. Zode (supra)** in which the petitioner was working as Asstt. Supervisor and whose services were terminated, had challenged the termination order as in violation of Section 25F of the Act but the respondents had averred that the petitioner was holding the post in the capacity as Supervisor and was drawing wages exceeding Rs. 1,500/- per month. During the evidence the respondent company produced documentary evidence to prove that the petitioner was holding the post in a supervisory capacity and also to show that he was supervising the post of other workers who were working under him amongst other evidence. Thus, it was held that the petitioner was not a workman.

25. In the judgment in the case of **Mr. A. K. Patel (supra)** it is observed that the designation is not conclusive and that the court must have regard to the dominant nature of the duties performed. By referring to the judgment in the case of **“Burma Shell Oil Storage and Distributing Co. of India Ltd., v/s Burma Shell Management Staff Association MANU/SC/0373/1970”** in which the Apex Court was considering the status of transport engineers it is observed that the major part of the duty has to be considered as compared to the technical work which was only incidental to the main work. One of the observations in the judgment in the case of **Burma Shell (supra)** is as under **“Even if the transport engineer uses his technical knowledge, it is used primarily for the purpose of supervising the work done by the skilled manual labourers who carry out the actual repairs, do the servicing or maintenance or complete fabrication”**.

26. In the judgment in the case of **S.V. Palwankar (supra)** the petitioner contended that he was a foreman mainly carrying out work of technical nature and only incidentally doing some supervisory work. It is however observed that if the petitioner was employed as a technical workman he could not have done the duties of allocation of jobs, assignment of work, recommendation of leave, carrying out of promotional appraisal and therefore in such situation he was not a workman. Likewise in the instant case, if one accepts the case of Party I that he was doing the work of manual or technical nature it is hard to understand as to why he was forwarding the accident report forms, overtime requisition slips, recommending late attendance etc. and therefore like in the above reported judgment Party I herein cannot be considered as a workman.

27. In the case of **Union Carbide (supra)** on the basis of oral and documentary evidence produced by the parties it is held that the respondent was working in supervisory capacity and merely because sometimes he carried out the work himself does not detract from the fact that he was a Supervisor. Thus, merely because Party I was doing the work as stated by him in para 15 above, the same cannot be construed to mean that he is a workman.

28. The observations in all the above judgments squarely apply to the instant case enabling this court to come to the conclusion that Party I is not a workman.

29. Even for that matter, in his cross examination Party I has made it clear that the salary of the workers of Party II was revised pursuant to the demands by Mandovi Pellets Workers Union; that he was not the member of Mandovi Pellets Workers Union at any time; that he does not know if the management had entered into any settlement with the said union; that the union had not made a demand that his salary should also be revised and that the management revised his salary on its own. No doubt, to be a member of the union is not a precondition for deciding whether the person concerned is a workman or not, however in the light of the evidence discussed above, this factor definitely weighs in favour of Party II. In this context, observations in the judgment in the case of **German Remedies (supra)** gain significance in which it is observed that the workman therein was not getting the benefits of agreement that was entered into by the company through representation of union and had he been the workman as claimed, then certainly he would have been aggrieved by this. Likewise in the instant case if Party I was a workman he would have been the member of Mandovi Pellets Workers Union and there would have been no reason for the management to revise the salary of Party I on its own. Thus, the above aspect also leads me to draw the conclusion that Party I is not a workman and hence my findings.

30. *Issue No. 1:* In view of above discussion in issue No. 2, the question of Party I proving that the action of the Party II in terminating his services w.e.f. 6-1-97 is illegal and unjustified, does not arise.

31. *Issue No. 3:* Having answered issue No. 2 by holding that Party I is not a workman the question of answering this issue does not arise for want of jurisdiction. Hence my findings.

32. In the result and in view of discussion supra,
I pass the following:

ORDER

1. It is hereby held that the action of the management of M/s. Mandovi Pellets Ltd., Near Borim Bridge, Shiroda Goa, in terminating the services of its Workman, Shri Luis D. J. Gomes "Foreman" with effect from 6-1-1997 is legal and justified.
 2. Party I, Shri Luis D. J. Gomes is therefore not entitled to any relief.
 3. No order as to costs.
- Inform the Government accordingly.

(B. K. Thaly),
Presiding Officer,
Industrial Tribunal-
-cum-Labour-Court.

Notification

No. 28/1/2013-LAB/566

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 15-07-2013 in reference No. IT/49/03 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Meena Priolkar, Under Secretary (Labour).
Porvorim, 14th August, 2013.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

(Before Smt. Bimba K. Thaly, Presiding Officer)

Ref. No. IT/49/03

Shri Vincent Coutinho (expired)
& others
C/o Francisco Cardozo
4th Ward, H. No. 478,
Colva, Salcete-Goa ... Workman/Party I
V/s
The Director of Tourism,
Department of Tourism,
Tourist Home, Patto,
Panaji-Goa ... Employer/Party II
Adv. Shri S. K. Manjrekar for Party I.
Adv. Shri V. D. Pangum for Party II.

AWARD

(Passed on this 15th day of July, 2013)

By order dated 16-7-2003, the Government of Goa in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short The Act) has referred the following dispute for adjudication.

"(1) Whether the action of the Department of Tourism, Panaji-Goa, in terminating the services of the following six workpersons with effect from 6-3-2002 is legal and justified?

- (1) Shri Vincent Coutinho, Labourer (expired).
- (2) Smt. Mungal D' Souza, Sweeper.
- (3) Smt. Minguelina Barreto, Sweeper.
- (4) Smt. Caitana Fernandes, Sweeper.
- (5) Smt. Senhorina Lucas, Sweeper.
- (6) Shri Adelino Fernandes. Labourer.

2. If not, what relief the workpersons are entitled to?"

2. Upon receipt of the reference, a case was registered under No. IT/49/03 and registered AD notices were issued to both the parties and upon service, Party I filed the claim statement at Exb. 5 and Party II filed the written statement at Exb. 6. Party I then filed the rejoinder at Exb. 7.

3. It is in short the case of Party I that they were appointed by Party II in their service and posted at Colva Beach for sweeping, cleaning and other related work and they were continuously working till the illegal termination of services by order dated 6-3-02. It is their case that they were under the direct control and supervision of Tourist Department. It is their case that the Department of Party II is an industry and therefore this tribunal has jurisdiction to try and entertain the dispute. It is their case that they have completed more than 240 days continuous service in a year, before the termination. It is stated that the duty of these workpersons was from 8:00 a.m. to 12:00 p.m. and 2:00 p.m. to 6:00 p.m. and their attendance was marked in attendance registers. That their monthly wage bills were prepared by the concerned official of the Department and were forwarded to the head office at Panaji and after receipt of the amount from the Panaji office, their wages were distributed every month. It is stated that at the time of their illegal termination, they were drawing around Rs.1680/- per month. It is stated that Party II vide order dated 6-3-2002 all of a sudden illegally and arbitrarily discontinued their services with immediate effect without assigning any reasons. It is stated that this entire action is illegal,

unjustified and bad in law so also without following the provisions of the law and thus they are entitled to be reinstated in services with full back wages, continuity of services and other benefits. It is stated that before termination of their services no show cause notice and no charge sheet was issued and even no domestic enquiry was conducted. It is stated that Party II did not follow the principles of natural justice so also the provisions of Section 25F, 25G and 25H were followed and this is because junior persons are working there and the Department has also taken new employees to do the same type of job which otherwise was performed by these workpersons. It is stated that on account of such illegal termination they raised dispute before Party II by letter dated 15-3-2002 but the Department did not take any step and therefore the dispute was raised before the Dy. Labour Commissioner, Margao, Goa by letter dated 11-4-2002 but as no settlement could arrive at, conciliation proceedings ended in failure and the matter was referred for adjudication before this Tribunal. It is also the case of Party I that there are more than 100 employees working with Party II and hence there is violation of Chapter VB of the Act. It is stated that from the date of termination of their services, the workpersons are unemployed. Party I has therefore prayed for an award holding that the termination of their services is illegal, unjustified and to direct Party II to reinstate them in services with full back wages, continuity of services and with all consequential benefits.

4. In the written statement Party II has denied the case put forth by Party I and has stated that Party I are not the Workmen and that there is no industrial dispute; that the services of Party I were engaged purely on contract basis and there is no relationship of employer and employee and that Party I have worked for less than 240 days during the period of 12 calendar months and therefore cannot claim any relief under the Act. It is further the case of Party II that Party I were engaged on daily wages as casual labourers for sweeping the beach and collecting garbage accumulated on the beaches in the month of May, 1998 and from October to December, 1998 and similarly for the year 1999 they were engaged from January to May and November to December and in the year 2001 they were engaged from January to May and from November to December. In the year 2002 they were engaged from January to 6th of March. It is stated that the services of Party I were purely on contract basis for the above said periods. It is stated that this court has no jurisdiction to try and entertain this dispute. It is stated that there was no continuity

in service for 240 days as required under the Act and that the services were discontinued as and when required. It is stated that Party I do not fall within the purview of the term "Workman" as defined in the Act and therefore the statutory requirement of issuing show cause notice, charge sheet, conducting enquiry does not arise. It is stated that Party I were not at all employed by means of issue of any appointment letter so also daily wages labourers are not given any appointment letter as per law or otherwise and the very fact of engaging the labourers on daily wages does not create any right in them for continuous service as alleged by the Party I. It is stated that Party II vide its letter dated 5-7-2002 had brought to the notice of the Dy. Labour Commissioner that the Party I are on contract basis. It is stated that there was no employer employee relationship and therefore there was no question of following statutory requirements. It is stated that the question of preparing of seniority lists did not arise as Party I were engaged on daily wages as and when required by the Department depending on the availability of work and this is evident from the fact that the workpersons were between the age group of 42 to 64 years as on the date of 1st engagement. Amongst above and other grounds Party II has prayed to reject the reference.

5. In the rejoinder Party I has controverted the case set up by Party II and has asserted the case projected in the claim statement.

6. Based on the above pleadings of both the parties, the issues were accordingly framed by this court.

7. In the course of the evidence Shri Vincent Coutinho the workperson at Sr. No. 1 in the schedule to reference expired. His LR's were not brought on record as the learned advocate appearing for Party I stated that he could not get any details of the L. R's. In support of their case Party I examined Smt. Mungal D' Souza as witness No. 1 and Shri Jose Roque Gracias Flor as witness No. 2 and closed the case. On the other hand Party II examined Mrs. Pamela Mascarenhas, Dy. Director of Party II as their witness and closed the case.

8. Heard Learned Adv. Shri S. K. Manjrekar for Party I and Learned Adv. Shri V. D. Pangum for Party II. Learned Advocate for Party I also filed the written submissions.

9. In his arguments Learned Advocate for Party I submitted that in the letter of termination of services no reasons for termination are mentioned. He also stated that the nature of the work of

cleaning the beaches is perennial and that since the time of appointment of these workpersons they have been working continuously and are paid monthly salary. By referring to the document such as Exb. 27 colly and Exb. 51 colly he stated that the workpersons worked for more than 240 days during the period of 12 months preceding their date of their termination. According to him when the payment is made on monthly basis even the holidays and Sundays are to be counted as working days. In support of his above submissions he relied on the judgment in the case of **Workmen of American Express...v/s Management of American Express AIR 1986 SC 458** and in the case of **Delhi Administration v/s Kuldip Singh and another W. P. (c) No.1413/1997 (High Court of Delhi)**. He also stated that there is violation of provision of Section 25F, 25G and 25H of the Act. He relied on the judgment in the case of **Devinder Singh v/s Municipal Council, Sanaur 2011 LLR 785** to contend that the case of Party II does not come within the exceptions to Section 2(o) (bb) of the Act and therefore while terminating the services, it was incumbent upon Party II to comply with the provisions of the Act. He then relied on the judgment in the case of **Subhash Chand v/s Municipal Corporation of Delhi 2011 LLR 791** to contend that there is no distinction between a permanent employee and a muster roll employee for applicability of Section 25F of the Act. Further, he relied on the judgment in the case of **Divisional Engineer Telecom, Coaxial Cable Project, Rajahmundry v/s Mamidi Venkata Ramana and another writ appeal Nos. 1404/1998 and 434/1999 2003 II CLR 839**, in **Municipal Corporation of Delhi v/s Jai Veer and another 2003 III CLR 886**, in **Dilip P. Mehta v/s Mercury Paints and Varnishes and others W.P. No. 2384 of 1999 2003 II CLR 888** to contend that when the workmen worked for more than 240 days in a calendar year there has to be compliance of Sec. 25F of the Act. He also relied on the judgment in the case of **Mohanan v/s State of Kerala 1994 I CLR 419** to contend that Tourism Department is an industry as defined u/s 2(j) of the Act. Further, he relied on the judgment in the case of **State of Rajasthan and Sher Singh and another 2003 (4) L. L. N. 954** to contend that since Party II herein has suppressed the material documents on the subject of continuous employment of the workpersons, adverse inference deserves to be drawn against Party II by holding that the workpersons were in continuous employment preceding the date of their termination. By relying on the judgment in the case of **K. C. Sharma v/s**

Delhi Stock Exchange 2005 LLR 417 and in the case of **Indian Acrylics Ltd., and another v/s Presiding Officer, Labour Court, Patiala and others 2011 LLR 794** he stated that like in these cases, the compensation in lieu of reinstatement will be appropriate in the instant case, considering the facts and circumstances of the case.

10. On the other hand learned Adv. for Party II submitted that the Department is not an industry and therefore there is no industrial dispute and thus this Tribunal has no jurisdiction to entertain this reference. He stated that in terms of Exb. 24 dated 6-3-2002 the services of these sweepers labourers are discontinued and not terminated. Further by inviting my attention to the pre-receipt bills at Exb. 27 colly he stated that the payment was made to Party I workers on daily wage basis. He also stated that there is no pleading in the claim statement stating as to which of the persons from amongst Party I has completed 240 days during the calendar year preceding the date of their of called termination. He also by referring to Para 4 of the claim statement where there is admission that the Department is an industry stated that it is a mistake and reading of this entire para viz. a viz para 3 of the claim statement gives a clear indication that such admission is a typing mistake and which fact has been brought on record in the evidence of the witness of Party II namely, M/s. Pamela Mascarenhas. He stated that the employment of Party I was purely on contract basis and therefore the same would come to an end after it is discontinued and therefore these persons have no right to claim reinstatement with continuity in services. In support of his above submissions he relied on the judgment in the case of **Secretary, State of Karnataka v/s Umma Devi AIR 2006 SCJ 1806**. He also stated that Party I has examined only one workperson i.e. Mungul D'Souza and therefore adverse inference deserves to be drawn against Party II for non examination of other workpersons comprising Party I except Shri Vincent Coutinho, who has expired.

11. I have gone through the records of the case and have duly considered the arguments advanced. I am reproducing herewith the issues along with their findings and reasons thereof.

Sr. No.	Issues	Findings
1	2	3
1.	Whether the Party I prove that the Party II terminated their services on 6-3-2002 in violation of the provisions of Sec. 25-F, G and H of the I. D. Act, 1947?	In the negative.

1	2	3
2.	Whether the Party I prove that the action of the Party II in terminating their services w.e.f. 6-3-2002 is illegal and unjustified?	In the negative.
3.	Whether the Party II proves that the Party I are not “Workmen” under the I. D. Act and as such there is no industrial dispute and hence this Tribunal has no jurisdiction to entertain and decide the dispute?	In the negative.
4.	Whether the Party II proves that there is no employer and employee relationship between the Party II and the Party I and hence the reference is not maintainable?	In the negative.
5.	Whether the Party I are entitled to any relief?	In the negative.
6.	What Award?	As per order below.

REASONS

12. *Issue Nos. 1, 2 & 3:* All these issues are answered together for the sake of convenience as they are interconnected and relate to the same subject matter i.e. termination of services of Party I and the status of Party I i.e. whether they are “workmen” or not. It deserves to be noted that issue No. 3 is cast by placing burden on Party II to prove that Party I are not “workmen” when infact it is for Party I to prove that they are the “workmen”, under the Act. In this context, reference is made to the judgment in the case of **S. T. Galande v/s P. O. Hind Labour Court, Pune 2008 (I) CLR 656** in which the Hon’ble High Court of Bombay has observed as under:

“... ..It is settled principle of law that the onus lies upon the workman to prove that he satisfies the essential ingredients of being a workman and, therefore, could raise an industrial dispute....”.

13. Nonetheless, since Party II herein has disputed the status of Party I as “workmen”, it is required to see if the evidence on record establishes ‘that Party I come within the definition of Section 2(s) of the Act.

14. It is stated by witness No. 1 for Party I that she along with other workpersons in the reference joined in the employment of Party II from 14-11-98 as labourers/sweeper and they were continuously working without any break and their work was of perennial nature. She has stated that they were doing the work of cleaning, lifting and disposal of garbage on Colva beach till the termination of their services by letter dated 6-3-02. She has produced the said letter at Exb. 24. She has stated that they were paid salary @Rs.56 per day on monthly basis and has produced pre-receipt bills for the month of May 2001, June 2001 and from August 2001 to February 2002 at Exb. 27 colly. She has stated that some of them were signing the muster roll and regarding those who could not sign their presence was marked as “P”. She has produced the copies of the attendance record from August 01 to March 02 at Exb. 26 colly. She has stated that they were working under the supervision and control of Party II. In her cross examination she has denied the suggestion that they were not eligible to be appointed as sweepers as they had already crossed the age bar of 35 years, fixed by the Government. She has however stated that she was born in the year 1965. She has stated that the office room of Colva Guest house was on fire sometimes in the year 2001 and that many items which were in the office were burnt in this fire.

15. Witness 2 for Party I, the Asst. Director in Party II Department has identified his signature on the pre-receipt bills (Exb. 51 colly), of the sweepers/labourers on contract basis at Colva beach for the month of May and June 2001. He has stated that if he remembers correctly some where on 5-8-2001 fire broke out in the Colva office and the entire record got destroyed.

16. Witness of Party II has reiterated the statements made by Party II in the written statement. In the cross examination she has made it clear that the admission in para 4 of the written statement that Party II Department is an industry is a typographical error. She has also clarified that no notice was issued to the Party I at the time of termination and no compensation was paid since they were working as daily wages. She has produced the School Leaving Certificate of Shri Vincent Coutinho, Baptism Certificates of Mungal Vital Musurkar, Senorina Lucas, Caitana Barbosa and the Birth Certificates of Minguelina Cardozo, Adelina Fernandes and Joao Vincent Coutinho at Exb. 53 colly.

17. It is clear from the evidence on record that it is not in dispute that Party I workpersons were doing the work of cleaning, lifting and disposal of garbage on Colva beach till the discountenance of services vide letter dated 6-3-02 at Exb. 24. It is also clear from the documentary evidence such as pre-receipt bills at Exb. 27 colly, letter dated 27-8-02 addressed by the Director of Tourism to the Dy. Labour Commissioner, Margao at Exb. 30 that the appointment of these sweepers/labourers was on contract basis at Colva beach. It is further clear from the pre-receipt bills at Exb. 27 colly that the monthly payment was made to these workpersons on the basis of number of days they actually worked including Sundays/Holidays which means that these workpersons were paid on Sundays and Holidays only if they actually worked on those days. That apart, even witness No. 2 for Party I i. e. Jose Roque Gracias Flor has made it clear that these workers were working on daily wages but their bills were prepared at the end of the month and this statement having come from the witness of Party I itself, has to be accepted without any demur. Nonetheless, merely because these work persons were employed on contract basis or that they were paid depending upon the number of days they worked per month, is not enough to exclude them from the ambit of the definition of the “workmen” u/s 2(s) of the Act. There is otherwise no dispute that the appointment of these workpersons was not pursuant to the issuance of appointment letters. It is observed in the judgment in the case of **Devinder Singh (supra)** that Section 2(s) contains an exhaustive definition of the term “workman” which includes any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. It is also observed in this judgment that it is immaterial that the terms of employment are not reduced into writing and that the source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages, pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. It is observed that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. It is observed that there is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on a temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

18. Apparently, the nature of work performed by Party I is manual and unskilled work and therefore Party I are the workmen u/s 2(s) of the Act.

19. In order to hold that Party II has violated the provisions of Section 25F of the Act, it is for Party I to prove that they have been in continuous service for not less than one year under Party II. In terms of Section 25B(2) a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of workman employed below ground in a mine and 240 days in any other case. In the instant case, admittedly the workpersons were not employed below ground in a mine.

20. Undoubtedly, the services of Party I were discontinued from 6-3-2002 (though according to Party I they were served with the notice on 8-3-02) and therefore it is for Party I to prove that they worked for 240 days during the period of 12 months preceding 6-3-2002. As rightly pointed out by learned advocate for Party I there is no specific pleading in the claim statement stating as to which of the workpersons from amongst the six in this reference (one expired during the pendency of the proceedings) have worked for 240 days during the period of 12 months preceding 6-3-2002. Exb. 27 colly which are the pre-receipt bills of Party I workmen for the month of May 2001, June 2001 and August 2001 to February 2002 as well as Exb. 51 colly which are the pre-receipt bills for the month of May 2001 and June 2001 are the documents produced by witness No. 1 for Party I showing the number of days Party I workmen actually worked during the period of 12 months preceding 6-3-2002. Calculating the days during which each of these 6 persons actually worked as per Exb. 27 colly and Exb. 51 colly it becomes clear that none of these workmen in terms of above documents have worked for 240 days during the 12 months preceding 6-3-2002. Further Exb. 26 colly is the attendance report of the workpersons for the period from August 2001 to 8-3-2002 and even calculating the days on which Party I workpersons worked as per Exb. 26 colly it further becomes clear that none of these workpersons have worked for 240 days during the period of 12 months preceding 6-3-2002. The arguments of learned advocate for Party I to the effect that when the payment is made on monthly basis, even Sundays and Holidays, are required to be counted as working

days, cannot be accepted for the simple reason that if such was the case there was no reason for Party II to count the number of days on which Party I workmen actually worked and pay them accordingly.

21. In the judgment in the case of **Workmen of American Express (supra)**, the concerned workperson joined the service of American Express International Banking Corporation as a Typists-Clerk in a temporary capacity and was employed as such with a number of short breaks, unlike the workpersons in the instant case who were admittedly appointed on daily wages and whose bills were prepared at the end of the month on the basis of number of days on which they actually worked. Even for that matter, in this judgment, it is observed that the expression “actually worked under the employer” found in Section 25B(a) of the Act comprehend all those days during which the workperson was in the employment of the employer and for which he/she had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. Learned advocate for Party I did not bring to my notice any such express or implied contract of service or any statute or standing order etc. between/applicable, both the parties herein, to canvas that these workpersons were paid even for Sundays and Holidays under such contract and hence these days deserve to be included while computing the period of 240 days. Thus, the observations in the above judgment cannot be applied to the instant case and this is more because as pointed by me above, there is nothing in the pleadings in the claim statement indicating the manner in which Party I workpersons have calculated 240 days of their work during the period of 12 months preceding 6-3-02 and which if pleaded would give opportunity to Party II to reply to the same.

22. As regards the observations in the judgment in the case of **Delhi Administration (supra)** reading of this judgment makes it clear that the management in their written statement filed before the Labour Court had not really disputed the dates of employment as stated by the workman. In this judgment which is delivered in the writ petition filed by the management. His Lordship opined that the factual finding of the Labour Court about the workmen having been employed by the management for 240 days in the preceding year cannot be faulted with and also because it being a finding of fact the same could not be interfered with in the writ jurisdiction more particularly when the

said finding was not shown to be perverse in any manner whatsoever. It is thus in the above situation by referring to the judgment in the case of **Workmen of American Express (supra)** the above finding of fact was accepted. The facts in the instant case could be easily distinguished from the fact situation in the case in the above judgment which makes it clear that the observations in the above judgment cannot be made applicable to the instant case. Thus, the conclusion that can be drawn from the above discussion is that Party I workpersons have failed to prove that each of them have worked for 240 days during the period of 12 months preceding 6-3-02. Being so, it would not be proper and justified to hold that there is violation of Section 25F of the Act, by Party II.

23. It is otherwise on record that on account of breaking of the fire in the office of the Party II at Colva the records of Party II have been destroyed. This fact is not seriously disputed by Party II and this is because Smt. Mungul D'Souza stated that she was aware that the office room of Colva guest house was on fire, some times in the year 2001 and that many items which were in the office were burnt in this fire. Even Shri Jose R.G. Flor has stated that somewhere on 5-8-2001 fire broke out in the Colva office and the entire record kept there got destroyed. Perusal of evidence of Ms. Pamela Mascarenhas and more particularly her cross examination reveals that there is admission on the part of Party I that there was an incident of fire in the office of Party II at Colva in August 2001 and the records were destroyed. In the judgment in the case of **Sher Singh (supra)** relied upon by the learned advocate for Party I, there was admission on the part of the management about existence of record of the attendance in the possession of the Department and it was in such situation held that the workman therein had fulfilled the condition of continuous employment as per Section 25B (2) of the Act, which was by drawing adverse inference against the Department. Since the fact situation in the instant case is totally different from the fact situation in the above judgment, ratio in the above case cannot be made applicable to the case at hand. Thus, the judgments relied upon by the learned advocate for Party I to show the applicability of Section 25F of the Act to the instant case, are of no help to Party I. Consequently it follows that Party I has failed to prove that the action of Party II in terminating their services w.e.f. 6-3-2002 is illegal and unjustified.

24. It is clear from the evidence on record that the appointment of Party I workman was not

pursuant to issuance of appointment order and even for that matter the said appointment was not as per the procedure required for filling up the posts in the Government. That apart, it is clear from the School Leaving Certificate/Baptism Certificates/ Birth Certificates of Party I workmen that at the time of their first engagement they were between age group of 42 to 64 years and had already crossed the age bar of 35 years fixed by the Government. In the judgment in the case of **Umadevi (supra)** it is held that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It is observed that if it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. It is also held in this judgment that merely because a temporary employee or a casual wage worker is continued for a time beyond the terms of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. The observations in this judgment also indicate that while directing that the appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time and that it is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment as he accepts the employment with eyes open. This judgment delivered by the Constitution Bench of the Apex Court therefore clearly indicates that the person employed without following proper procedure or that whose engagement is not based on a proper selection as recognized by the relevant rules or procedure cannot invoke the theory of legitimate expectation for being confirmed in the post. It is worthwhile pointing out at this stage that this judgment in the case of **Umadevi** was considered in the case of **Devinder Singh (supra)** wherein the Hon'ble Apex Court ordered reinstatement of workman with back wages though the regular procedure for engagement of workman in service was not followed. Reading of this judgment however makes it clear that at the time of engagement of workman in service, Punjab Government had imposed a ban on filling up of the vacancies and in such situation pursuant to a resolution, the Workman was engaged

for a particular period which period was later extended by passing of subsequent resolutions. Thus, it was in this situation his reinstatement was ordered by the Apex Court. Therefore the fact situation in this judgment is distinguishable from the fact situation in the case of **Umadevi**. It therefore follows from the above discussion that discontinuation of services of Party I by Party II, is not illegal and unjustified. Hence my findings.

25. *Issue No. 4:* In the written statement it is pleaded by Party II that the services of Party I were engaged purely on contract basis and there is no relationship of an employer and employee and hence this reference is not maintainable. It is otherwise not disputed by Party II that the attendance of Party I was marked in the attendance registers; that their monthly wage bills were prepared by the concerned official of the department and the same were forwarded to the head office at Panaji and after the receipt of the amount from the Panaji office, the wages were distributed to the workpersons every month. It is therefore clear that Party II department was exercising control over the Party I Workman. It may be mentioned here that the nature of the work performed by Party I workman was such that it did not require direct supervision and the control could be exercised at the end of the month while paying the wages and hence in such situation such control was sufficient to establish the employer employee relationship. Thus, merely because Party I Workman were engaged purely on contract basis would not be sufficient to say that there was no employer and employee relationship between the parties.

26. It is also the contention of Party II that it is not an industry as defined in Section 2(j) of the Act. It deserves to be noted that in para 3 of the claim statement Party I has pleaded that Party II is an industry and in reply to this para vide para 4 in the written statement Party II has admitted that it is an industry. However, in her cross examination witness of Party II has made it clear that admission made in para 4 of the written statement is a typographical mistake. Nonetheless, the fact remains is that this so called typographical mistake is not corrected by Party II till date. No doubt, reading of the defence of Party II in entirety gives a clear indication that it is the case of Party II that it is not an industry. However the observations in the case of **Mohanani (supra)** are clear to the effect that Tourism Department of the State does not discharge sovereign functions to qualify for exemption and that it is a department meant to promote tourism

to which end it has to devise means to attract tourists and ensure their convenience and safety. It is observed that basically its activities have commercial and economic futures quite apart from what the State does or is expected to do in the discharge of its sovereign functions. Thus it is held in this judgment that the Tourism Department is an industry as defined u/s 2(j) of the Act. This being the case, Party II cannot be heard to say that, it is not an industry. Being so this court has jurisdiction to entertain this dispute. Hence my findings.

27. *Issue No.5:* In view of discussion supra, Party I workmen are not entitled to any relief.

In the result, I pass the following:

ORDER

1. It is hereby held that the action of the Department of Tourism, Panaji-Goa, in terminating the services of the following six workpersons with effect from 6-3-2002 is legal and justified.

- (1) Shri Vincent Coutinho (expired).
- (2) Smt. Mungal D'Souza, Sweeper.
- (3) Smt. Minguelina Barreto, Sweeper.
- (4) Smt. Caitana Fernandes, Sweeper.
- (5) Smt. Senhorina Lucas, Sweeper.
- (6) Shri Adelino Fernandes, Labourer.

2. Party I workmen are therefore not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

(B. K. Thaly),
Presiding Officer,
Industrial Tribunal-
-cum-Labour-Court.

Notification

28/1/2014-Lab/288

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 01-08-2013 in reference No. IT/9/12 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Labour).
Porvorim, 23rd May, 2014.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT GOVERNMENT OF GOA AT PANAJI

(Before Ms. Bimba K. Thaly, Presiding
Officer)

Ref. No. IT/9/12

Shri Shambu Gaude,
H. No. 133/A, Rajinwada,
Gaunem, Bandore,
Ponda-Goa

.... Workman/Party I

V/s

M/s. Aventis Pharma Ltd.,
GUDC, Plot No. L-121, Phase III,
Verna Industrial Estate,
Verna-Goa

.... Employer/Party II

Workman/Party I represented by Adv. Shri P. Naik.
Employer/Party II represented by Adv. Shri M. S.
Bandodkar.

AWARD

(Passed on this 1st day of August, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short The Act), the Government of Goa by order dated 05-01-2012 bearing No. 28/46/2011-Lab-33 has referred the following dispute for adjudication by this Tribunal:

- “(1) Whether the action of the management of M/s. Aventis Pharma Limited, Verna Goa, in dismissing from service, it's workman, Shri Shambu B. Gaude, Operator with effect from 25-02-2008, is legal and justified?
- (2) If not, what relief the workman is entitled to?”

(2) On receipt of the reference, a case was registered under No. IT/9/12 and registered A. D. notices were issued to the parties. Upon receipt of the notice, Party I filed the claim statement at Exb. 6. Party II filed the written statement at Exb.7 and thereafter Party I filed the Rejoinder at Exb. 8.

3. In the claim statement, it is in short the case of Party I that Party II is a company duly incorporated under the company's Act and is licenced as a factory by the appropriate authorities under the Factories Act, 1947. It is stated that Party II has not been complying with the mandatory provisions of the Factories Act, 1947. It is stated that the workman had on the various occasions represented to the Management about the unsafe working conditions at the factory but

the management continued to turn a deaf ear to the complaints of the workman. It is stated that the services of Party I/workman were illegally terminated on 25-2-08 with malafide intention without conducting domestic enquiry in terms of the standing orders. It is stated that since Party I was the active member/office bearer of the trade union, the management committed unfair labour practice and deprived him of his livelihood. It is stated that the present dismissal order is an act of unfair labour practice resorted to take revenge on Party I in collusion with Mrs. Renee Amonkar for complaining the indecent and improper behaviour of said Mrs. Renee Amonkar towards the unionized member workman at the shop floor. It is stated that Party I was terminated without conducting enquiry and in breach of principles of natural justice. Hence the reference.

4. In the written statement Party II has denied the case set up by Party I and has stated that Party I has committed serious acts of misconduct and having regard to his past misconduct, Party II was compelled to dismiss him from services without holding any enquiry. It is stated that on 19-2-2008, Mrs. Renee Amonkar, the Head of Packaging, observed that there was scribbling on the dispensed foil used for packing of Paracetamol for exports to U.K. It is stated that on 20-2-2008 when Party I was in the first shift, Mrs. Renee Amonkar at about 15:05 hrs. noticed Party I along with the one Mr. Surya Naik sitting on dispensed material in the Material Movement Corridor though at that time he was required to be in manufacturing area. It is stated that in the light of the incident of 19-2-2008, Mrs. Renee Amonkar with Mr. Sagar Narvekar noticed some scribbling on the outer cover of another roll of foil. Thereafter both of them noticed Party I and Mr. Surya Naik sitting on dispensed material though they were required to be at the place of their work. Upon questioning Mr. Surya Naik about their presence at that place Party I interrupted and commented in Konkani "don't talk to her, because she is 'sutlya' ". Mrs. Renee Amonkar informed this incident to Mr. Gaurav Sharma who is the Head of the manufacturing, under whom Party I and Mr. Surya Naik are working. Thereafter, Mrs. Renee Amonkar called on Mr. Sathyabalam, Executive Packing, to continue investigation in connection with scribbling on dispensed foil. When Mrs. Renee Amonkar and Mr. Sathyabalam were discussing the matter, Party I along with other operators opened the door and Party I questioned Mr. Sathyabalam as to why he was clicking pictures and upon telling by Mrs. Renee Amonkar that he had no business

to be there Party I aggressively addressed towards them and pointing towards Mrs. Renee Amonkar, said in a loud voice in Konkani "you want to take my picture, I will give you my nude picture outside the gate and you can keep it with you." Even after telling by Mr. Sathyabalan that it was not the right way to talk, Party I ignored and continued to repeat the same words towards Mrs. Renee Amonkar. It is stated that the above incident totally demoralized Mrs. Renee Amonkar and the other Executives of the Organization. It is stated that having regards to the grave and serious act of misconduct committed by Party I, the company in the interest of entire organization in particular the safety and morale of lady staff, decided not to retain Party I in the services of the company and accordingly he was dismissed vide letter dated 25-2-08, without holding an enquiry. It is stated that all the executives who have experienced/ /witnessed the horrible incident had in clear terms informed the management that due to threat to their lives and demoralization, they are not prepared to give evidence in the domestic enquiry in the presence of Party I. Thus, in such circumstances it was not possible for the management to hold domestic enquiry as the witness themselves have opined that they are in a state of mental shock and fear psycho. It is stated that Mrs. Renee Amonkar filed a criminal complaint against Party I for sexual harassment at Verna Police Station and accordingly the case was registered and tried by JMFC, Margao and the Hon'ble Court held Party I guilty and sentenced him to simple imprisonment for two months for the offence punishable under Sec. 509 IPC and to pay fine of Rs. 3000/- i/d undergo S. I. for two months. It is stated that the Party I is a habitual indisciplined workman and that the entire act of the management in dismissing Party I even without holding an enquiry is totally legal and fully justified. Thus, amongst above and other grounds Party II has prayed to reject the reference.

5. In the rejoinder Party I has denied the contentions raised by Party II in the written statement.

6. In view of the averments of the respective parties, following issues were framed on 21-3-2013 (Exb.11). The same are as under:

1. Whether the Party I proves that the dismissal order dated 25-2-08 issued without holding a domestic enquiry is an act of unfair labour practice resorted to take revenge on him in collusion with Mrs. Renee Amonkar for complaining her indecent and improper

behaviour towards the unionized member workman at the shop floor?

2. Whether the Party I proves that throughout his working with the Party II for about 10 years, no disciplinary proceedings were instituted against him by the Party II?
3. Whether the Party I proves that his services were illegally terminated by Party II?
4. What relief? What order?

7. In the course of further proceedings and when the matter reached the stage of recording evidence of Party I, the parties filed an application at Exb. 12 stating that they have settled the subject matter of the dispute in this reference by arriving at the settlement. The said settlement terms incorporated in Exb. 12 read as under:

1. It is agreed between the parties that the Party II/Management of M/s. Aventis Pharma Ltd., shall pay a sum of Rs. 4,00,000/- (Rupees four lakhs only) to the Party I/Shri Shambu Gaude, which shall include all the claims of Shri Shambu Gaude arising out of the present reference and his employment, dismissal and resignation. The above amount shall include all his claims of unpaid wages, gratuity, ex-gratia, bonus, leave encashment etc., if any or any other claim/benefit which can be computed in terms of money, including any claim of reinstatement or re-employment.
2. It is further agreed by the Party I that he shall submit his resignation stating that he has resigned from the services of the company of his own free will and the Party II shall accept the said resignation w.e.f. 31-7-2013.
3. It is further agreed between the parties that upon receipt of the resignation letter from the Party I, the Dismissal Letter dated 25th February, 2008 issued to the Party I shall be withdrawn by the Party II with immediate effect.
4. It is further agreed between the parties that the Party II shall pay the above mentioned amount of Rs. 4,00,000/- (Rupees four lakhs only) to the Party I vide cheque No. 021721 dated 27-7-13 drawn on HDFC Bank, Margao Branch.
5. It is further agreed between the parties that the Party I shall not claim any further money/ /benefit, which can be computed in terms of money from the Management of M/s. Sanofi India Limited (formerly Aventis Pharma Ltd.),

from the date of dismissal till the date of resignation from the company, i.e. from 25th February, 2008 to 31st July, 2013.

8. The above terms are signed by both the parties and their advocates. Vide the above terms, parties have prayed for an award in terms of the settlement between them.

9. I have gone through the terms of the settlement at Exb. 12 entered into between the parties towards amicable settlement of the dispute. I accept the said terms and pass the following:

ORDER

1. The reference stands disposed off by consent award in view of the consent terms filed by the parties at Exb. 12.
2. No. order as to costs.

Inform the Government accordingly.

Sd/-
(B. K. Thaly)
Presiding Officer
Industrial Tribunal-cum-
-Labour Court-I

Notification

No. 28/1/2014-Lab/262

The following award passed by the Industrial Tribunal and Labour Court at Panaji-Goa on 25-03-2014 in reference No. IT/51/03 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Labour).
Porvorim, 05th May, 2014.

IN THE INDUSTRIAL TRIBUNAL
AND LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

(Before **Ms. Bimba K. Thaly**, Presiding
Officer)

Ref. No. IT/51/03

Shri Ganesh H. Naik,
Represented by Goa Trade and
Commercial Workers Union,
Velho Building, 2nd floor,
Panaji-Goa

Workman/Party I

V/s

M/s. Kaybee Marine
Consultants Pvt. Ltd.,
Damodar Chambers, 1st floor,
Vasco da Gama, Goa Employer/Party II

Adv. Shri A. Kundaikar present for Workman/
/Party I at the time of evidence and arguments.

Adv. Shri P. Chawdikar present for Employer/
/Party II at the time of evidence but absent at the
time of arguments.

AWARD

(Passed on this 25th March, 2014)

1. In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short The Act), the Government of Goa by order dated 16-7-03 bearing No. 28/31/2003-Lab referred the following dispute for adjudication.

“(1) Whether the action of the management of M/s Kaybee Marine Consultant Pvt. Ltd., Vasco da Gama, Goa in refusing employment to their workman Shri Ganesh H. Naik, Supervisor with effect from 13-11-1996 is legal and justified?

(2) If not, what relief the workman is entitled to?”

(2) Upon receipt of the dispute, reference No. IT/51/03 was registered. Notices were issued to both the parties under registered post, upon which both the parties were served. Party I filed the claim statement at Exb. 5. Party II filed written statement at Exb. 6. Rejoinder was filed by Party I at Exb. 7.

3. It is in short the case of Party I that he was appointed by Party II as Technician in the consolidated salary of Rs. 1600/- per month from 18-11-1987. It is stated that on 13-11-96 when he resumed duties, he was refused employment and strictly warned not to join the duties and as such he approached Asstt. Labour Commissioner for conciliation. It is stated that Party II is dealing with the repairs of the barges for which his services were engaged along with other workers. It is stated that the action of Party II in refusing employment to him is malafide and an instance of unfair labour practice. It is stated that before refusal of employment Party I was not issued charge sheet so also show cause notice nor any departmental enquiry was conducted and he was refused the employment without any cause and thus it is illegal and bad in law.

4. Party I has therefore prayed for an award holding that refusal of employment to him w.e.f. 13-11-96 as illegal and unjustified and to direct Party II to reinstate him in service with full back wages and continuity in service.

5. In the written statement Party II has denied the case setup by Party I and has stated that Party I was the ‘supervisor’ working in the management cadre and is not a ‘workman’ u/s. 2(s) of the Act. It is stated that Party I performed essentially and predominantly supervisory, managerial and administrative functions and his such duties and exercise of powers over the subordinate excludes him from the purview of the definition of ‘workman’ under the Act. It is stated that Party I failed to report for work his salary was more than Rs. 1600/- per month and that the grades, scales and allowances applicable to him were of the management cadre. It is stated that Party I was issued salary certificate at his request which was used by him to purchase a motor cycle which motor cycle was used by Party I during office hours for commercial purpose for which he was reprimanded verbally by the management. It is stated that Party I did not report for duties from 12-11-96 and continued to remain absent till date. It is stated that Party I was never refused employment and thus the question of show cause notice or departmental enquiry does not arise. It is stated that the Party II has suffered grave losses as Party I failed to report for work till date. It is stated that Party I is therefore not entitled for any relief.

6. In the rejoinder Party I has denied the contentions raised by Party II in the written statement and has stated that in deciding whether Party I was a workman it is essentially the duties which he was discharging has to be taken into consideration. It is stated that the Party I had no administrative powers such as to grant leave nor any workman was working under his instructions and directions.

7. In view of above averments of the respective parties, issues dated 6-7-2004 at Exb. 8 were framed.

8. In the course of evidence Party I Shri Ganesh Naik examined himself and closed his case. On the other hand Party II examined one Shri Pankaj Yagnic as their witness and closed their case.

9. Heard Ld. Adv. Shri A. Kundaikar for Party I. Though Party II was represented by Adv. Shri P. Chawdikar all through out till recording of the evidence, later said advocate withdrew his

appearance by issuing notice to Party II and despite service of notice, Party II did not appear before this court. Hence, after giving opportunity to Party II to put in its appearance, which Party II did not avail of, the arguments of Ld. Advocate for Party I were heard.

10. In his arguments Ld. Adv. for Party I stated that Party I was employed as welder with Party II and that he was not performing any supervisory duties. He stated that Party I was reporting to the incharge of the workshop and considering the nature of duties performed by him as a welder which are of unskilled nature, Party I is a workman u/s. 2(s) of the Act. He relied on the judgement in the case of **Lloyds Banks Ltd., New Delhi v/s Panna Lal Gupta & Ors AIR 1967 SC 248** to contend that supervisor should occupy a position of command or decision and should be authorized to act in certain matters within the limits of his authority without the sanction of the manager or other supervisors. By referring to the nature of duties performed by Party I as welder, he stated that Party I therefore cannot be working as a supervisor. By referring to the above judgment he further stated that the name or the designation of the employee is not a determining test and what determines the status is the nature and duties of the function assigned to the employee concerned. He further stated that Party I was refused employment on 13-11-96 upon which he raised a dispute but according to Party II, Party I did not report for duties from 12-11-96 and continued to remain absent which in other words means, Party I has abandoned the services. By referring to the judgment in the case of **Gangaram K. Medekar v/s Zenith Safe Mfg. Co. & Ors. 1996 1 CLR 172**, he stated that in a case of abandonment of service it is a matter of intention and therefore the employer has to hold a domestic enquiry. By referring to this judgment, he further stated that when it is the case of the workman that his services was orally terminated and the employer's case is that the workman abandoned the services the evidence is word against word and therefore the benefit in such circumstances must go to the workman because the company has to prove clearly the case of abandonment.

11. I have gone through the records of the case and have duly considered the arguments advanced. I am reproducing herewith the issues along with their findings and reasons thereof:

Sr. No.	Issues	Findings
1.	Whether the Party I proves that he was refused employment by the Party II from 13-11-96?	In the positive.
2.	Whether the Party I proves that the action of the Party II in refusing employment to him w.e.f. 13-11-96 is illegal and unjustified?	In the positive.
3.	Whether the Party II proves that the Party I is not a workman as defined under Sec. 2(s) of the I. D. Act, 1947?	Party I is a workman u/s. 2(s) of the Act.
4.	Whether the Party II proves that Party I did not report for duties after 12-11-1996 and remained absent from thereafter?	In the negative.
5.	Whether the Party I is entitled to any relief?	As per award.
6.	What Award?	As per order below.

REASONS

12. *Issue No. 3:* This issue is answered before answering the other issues as it goes to the root of the matter. This is because, if it is established that Party I is the workman as defined u/s 2 (s) of the Act, it is only then this court would get jurisdiction to adjudicate this reference.

13. Be that as it may, though vide issue No. 3, the burden of proving that Party I is not the 'workman' u/s 2 (s) of the Act is cast on Party II, as per the settled law said burden rests on the party approaching the court seeking reliefs under the Act. Reference in this context is made to the judgment in the case of **S. T. Galande v/s P. O. Hind Labour Court, Pune 2008 (I) CLR 656** in which the Hon'ble High Court of Bombay has observed that onus lies upon the workman to prove that he satisfies the essential ingredients of being a workman and, therefore, could raise an industrial dispute. Being so, it is required to see if Party I has discharged the burden of proving that he is the workman u/s 2(s) of the Act.

14. In the claim statement Party I has pleaded that he was appointed by Party II as Technician. In the written statement it is the case of Party II that Party I was the supervisor working in the

management cadre and is not a workman. In the rejoinder Party I has stated that the duties of the Party I are to be looked into to find out if he is a workman.

15. In his evidence Party I has stated that he was working with Party II as welder and was doing the work of welding at the time of barge repairs. In his cross examination Party I has stated that he did not state in claim statement that he was appointed as a Technician. He has denied the suggestion that he was appointed neither as a Technician nor as a Welder and that he was appointed as a Supervisor. Party I has also made it clear that he was not issued any appointment letter. He has further stated that his work was cutting, fitting and welding.

16. From the nature of above evidence, it stands established that it is the specific case of Party I that he was working as technician/welder doing the work of cutting, fitting and welding irrespective of the fact that in his claim statement Party I has stated that he was working as a technician and in his chief examination, that he was working as a welder. Nonetheless, as rightly pointed out by the Ld. Advocate for Party I by referring to the observations in the judgment in the case of **Lloyd Bank (supra)**, in deciding the status of an employee, his designation is not decisive but what is to be looked into is the nature and duty performed by him. In the above context, cross examination of Shri Pankaj Yagnic gains significance since he has made it clear that he as an Administrative Executive, sometimes in June/July 1993 has been to the workshop of Party II and at that time he had seen Party I working in the workshop. He has stated that he was also incharge of the workshop wherein Party I was working. He has stated that Party I was required to submit his leave application to the person incharge of the workshop who was his immediate superior. He has stated that Party I had to report to the said person who was incharge of the workshop. From the nature of above statements of Shri Pankaj Yagnic, the Administrative Executive of Party II, it becomes clear that Party I was working in the workshop under the control of incharge of the workshop and thus in this sense Party I cannot be called as a 'supervisor'. The meaning of the term 'supervisor' is highlighted in the judgment in the case of **Vinayak Baburao Shinde v/s S. R. Shinde and Ors 1985 HC 318 as under:**

"..... The word 'supervise' means to oversee, that is to look after the work done by other persons. The word 'supervision' occurring in section 2(s) of

the Industrial Disputes Act means supervision in relation to work or in relation to persons. The essence of supervision consists in overseeing by one person over the work of the others. This also involves a power in the persons overseeing to direct and to direct and to control the work done by the persons over him he is supervising"

17. Reference also deserves to be made to the judgment in the case of **Union Carbide (India) Ltd. v/s D. Samuel and Ors. 1998 (80) FLR 684** in which numerous tests have been laid down to find out whether a person is doing the supervisory work and one of them is to see if he has power to sanction leave or recommend it or if there are other persons working under him. It is clear from the statements brought on record in the cross examination of Shri Pankaj Yagnic, that Party I has to send his leave application to his immediate superior which in other words means that Party I had no powers to sanction leave or to recommend it, so also that Party I was working in the workshop under the control of his incharge. Therefore applying the observations/tests laid down in the above judgments, it becomes clear that Party I was not doing the supervisory work.

18. Be that as it may, in the cross examination of Party I, he has stated that he was not allotting and supervising the work of the daily wages employees. He has denied the suggestion that he was allotting work to daily wage employees and was also supervising their work. Party I has produced the salary certificate issued to him by Party II at Exb. W-1. This certificate is dated 12-1-96 and it is signed by the Manager of Party II. Reading of this certificate reveals that it is mentioned therein that Party I is an employee of Party II company working at their Old Goa workshop. The gross salary of Rs. 2,300/- per month, drawn by Party I as on the date of issuance of this certificate is also mentioned in Exb. W-1. It deserves to be noted that Party II has not mentioned the designation of Party I in Exb. W-1. Since this certificate has been issued by Party II, nothing had prevented Party II from mentioning the designation of Party I as "supervisor", in this certificate, instead of standing that Party I is the employee of Party II. Thus, this certificate when read carefully indicates that, in fact helps Party I to establish that he is a "workman". Being so, the fact of Party I drawing more than Rs. 1,600/- per month at the relevant time is of no consequence to exclude him from the definition of "workman" u/s 2(s) of the Act.

19. Party I has produced at Exb. W-2, Exb. W-3 colly and Exb. W-4 the copies of the letters dated 9-1-97, 5-3-97 and 8-10-97 issued by the Goa Trade and Commercial Workers Union to Mr. V. M. Barucha of Party II, Labour Commissioner and Asst. Labour Commissioner, Vasco da Gama, Goa respectively and reading of these letters give a clear indication that the status of Party I Shri Ganesh Naik is mentioned as “workman” in these letters. It may be mentioned that these letters have been sent basically requesting reinstatement of Party I back on his job with continuity of service and back wages. Party II while cross examining Party I or in the chief examination of Shri Pankaj Yagnic, has not denied of having received the letter dated 9-1-97 at Exb. W-2. It is therefore clear that Party II had received the aforesaid letter and despite it, did not send reply to it denying the status of Party I as “workman” as mentioned in this letter.

20. Thus, the totality of facts discussed above lead me to draw the only inference that Party I is a ‘workman’ u/s 2 (s) of the Act. Hence my findings.

21. *Issue Nos. 1 & 4:* Both these issues are answered together for the sake of convenience, as they are interconnected.

22. It is specific case of Party I that on 13-11-96 when he resumed duties, he was refused employment by Party II. In answer to this it is the defence of Party II that Party I was never refused employment but he did not report for duties from 12-11-96 and continued to remain absent till date. In the claim statement Party I has pleaded that it was one Shri Manoj Shirodkar who did not permit him to join the duties but in the written statement Party II has stated that said Shri Manoj Shirodkar was workshop incharge and had no authority to decide on behalf of Party II. It may be mentioned here that in his evidence Party I Shri Ganesh Naik has stated that on 13-11-96 he had gone to collect his salary in the office of Party II at which time Mr. Barucha, the Manager of Party II told him not to report for work and thus refused employment to him. He has stated that thereafter he approached the Goa Trade and Commercial Workers Union and Mr. Raju Mangeshkar, the office bearer of the said union wrote letter dated 9-1-97 i.e. Exb. W2 to the Manager Mr. Barucha and this letter was sent by registered A. D. post. As pointed out by me above, Party II did not send reply to this letter nor deny of having received this letter. Reading of this letter reveals that the same has been addressed to Mr. V. M. Barucha, the Manager of Party II and it is stated therein that on 13-11-96 Party I Ganesh Naik was

refused employment by Mr. Manoj Shirodkar, who was the incharge of Party II. It is further stated in this letter that when Party I Ganesh Naik approached Mr. Barucha he too refused to allow him to resume his duties. It is worthwhile noting that though Mr. Pankaj Yagnic has stated that Party II did not refuse employment to Party I, the fact however remains is that Party II did not send reply to the letter dated 9-1-97 at Exb. W-2 which letter was sent to it soon after i.e. within two months of so called refusal of employment to Party I by Party II.

23. No doubt, in the claim statement it is the case of Party I that it was Mr. Manoj Shirodkar who did not permit Party I to join the duties and in his evidence, Party I Shri Ganesh Naik has stated that it was Mr. Barucha who refused employment to him and not Mr. Manoj Shirodkar but it is apparent from the contents of letter dated 9-1-97 (Exb. W-2) that both the above persons refused employment to Party I Ganesh Naik. Since the contents of this letter are not controverted by Party II despite receipt of this letter and a documentary evidence prevails over the oral evidence, I have no hesitation to hold that Party I was refused employment on 13-11-96 by Party II.

24. Be that as it may, the corollary therefore is that the case projected by Party II that Party I did not report for duties after 12-11-96 and remained absent thereafter, fails. It may be mentioned here that in his cross examination Shri Pankaj Yagnic has stated that Party II had orally instructed Party I to report for duties but no cogent and convincing evidence has been produced by Party II in support of the above statement made by Shri Pankaj Yagnic. Nevertheless, even if one believes the case of Party II that it was Party I Shri Ganesh Naik who stopped reporting for duties which means that he abandoned the duties, in terms of the observations in the judgment in the case of **Gangaram K. Medekar (supra)** in case of abandonment of service it is matter of intention and therefore employer has to hold a domestic enquiry. It is also observed in this judgment that if it is the case of the workman that his services were orally terminated and the defence of the employer that the workman has abandoned the services, and even assuming that the evidence is word against word, the benefit in such circumstances must go to the workman because the company has to prove clearly the case of voluntary abandonment.

25. On the above subject, I would also refer to judgment in the case of **The Executive Engineer, Irrigation Div. I, Jaipur and Anr. v/s Nar Narain 1994 L.L.R. 538**, in which it is observed as under:

“The employee is always in a disadvantageous position vis-a-vis the employer. He is not in a position to dictate the terms of employment qua the employer. It is the sweet-will of the employer to engage a workman on the terms and conditions which suit the employer. However, when a workman leaves service after working for a year or more, the natural conduct which is expected of the employer is to make an enquiry as to why the workman is not coming on duty”.

26. Reference is also made to the judgement in the case of **Gaurishankar Vishwakarma v/s Eagle Spring Industries Pvt. Ltd., 1987 (55) FLR 689** in which it is observed that even in a case of abandonment of service, the employer has to give a notice to the workman calling upon him to resume his duty and must hold an enquiry before terminating his services on that ground.

27. From the above settled prepositions of law viz-a-viz the defence taken by Party II and the statement made by Shri Pankaj Yagnic that Party II had orally instructed Party I to report for duties without producing any cogent evidence supporting the above statement, it becomes clear beyond doubt that Party II did not give any notice to Party I calling upon him to resume duty nor did Party II make any enquiry as to why Party I was not coming on duty. Thus, benefit of such circumstances has to go to Party I as Party II has failed to prove the case of abandonment of services by Party I.

28. It is therefore clear from the above discussion that Party I has proved issue No. 1 whereas Party II has failed to prove issue No. 4. Hence my findings.

29. *Issue No. 2:* As Party I has proved that he was refused employment w.e.f. 13-11-96 and as it is apparent from the records that such refusal was without complying with the provisions of the Act more particularly Sec. 25 of the Act, the same is illegal and unjustified. Hence my findings.

30. *Issue No. 5:* The relief sought by Party I in the present reference is of his reinstatement in service with full back wages and continuity in service. In his claim statement Party I has not stated that he is unemployed since the time of refusal of services by Party II.

31. It cannot be lost sight of the fact that the initial burden to prove that he is not gainfully employed is on the person claiming back wages and as Party I has not pleaded that he is not gainfully employed, he has therefore failed to discharge this initial burden. Reference is made to the judgment in the case of **Kendriya Vidyalaya Sangathan and another v/s S. C. Sharma AIR 2005 SC 768** and in the case of **J. K. Synthetics Ltd., v/s K. P. Agrawal and another (2007) 2SCC 433** in which it is observed that when the question of determining the entitlement of a person to backwages is concerned, the employee has to show that he was not gainfully employed. It is also held that the initial burden is on the employee and after he places materials in that regard, the employer can bring on record materials to rebut the claim. Since in the instant case Party I has not pleaded about unemployment, the question of Party II bringing on record material to rebut the claim does not arise. It therefore follows that no case has been made out by Party I of claiming the back wages.

32. As regards the claim of Party I of reinstatement, it deserves to be noted that Party I is out of employment since November 1996 which means that a period of around 17 to 18 years has lapsed by now. Party I therefore cannot be expected to remain idle till date nor one can conclude that he is not earning his livelihood. In his cross examination, Party I has stated that he had obtained the salary certificate at Exb. W-1 as he wanted to avail loan at the time of his marriage. He has stated that he had obtained another certificate for availing loan for purchasing a motor cycle and on the basis of it he had purchased a motor cycle. No doubt, he has also stated that he did not register this motor cycle as a pilot taxi but registered it as a private vehicle but in the same breath he has made it clear that after his termination he did not try to get employment at any other place though according to him it was because he was not given experience certificate. Nevertheless, he has further stated that he did not ask Party II for the experience certificate. The above evidence when read carefully gives a clear indication that Party I was not interested in employment after he was terminated. The only probable inference which could therefore be drawn from such attitude of Party I is that he has been earning his livelihood which is most probably by working as a motor cycle pilot. It is therefore in such situation, would not be proper and justified to order reinstatement of Party I in service. This is also because the relations between Party I and Party II over the period of years also must have been strained due to pendency of this litigation.

33. It is held by the Hon'ble Apex Court in the judgment in the case of **Incharge Officer & Anr v/s Shankar Shetty 2010(9) SCC 126 and Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal & Ors AIR 2010 SC 2140**, that *"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."*

34. Reference also deserves to be made to the judgment in the case of **Prem Chand Sharma v/s Gannon Dunkerley & Co. Ltd. 2014 1 CLR 637** in which it is observed that whenever termination of workman is found to be illegal or in contravention of prescribed law/or rules, instead of relief of reinstatement with back wages, reasonable amount of monetary compensation would be appropriate relief.

35. Considering the above settled position of law, in my considered opinion, payment of monetary compensation instead of reinstatement would be just, proper and fair. Records reveal that Party I was employed with Party II in the year 1987 and he was terminated in the year 1996. It is apparent from the salary certificate of Party I that in the year 1996 his gross salary was Rs. 2,300/- per month. It is also a matter of record that Party I has been litigating the present reference for a period of around 17 to 18 years and considering all these factors, in my view, the payment of lumpsum of Rs. 1,25,000/- would be reasonable and would meet the ends of justice. Hence my findings.

36. In the result and in view of discussion supra, I pass the following:

ORDER

1. It is hereby held that the action of the management of M/s. Kaybee Marine Consultants Pvt. Ltd., Vasco da Gama, Goa in refusing employment to their workman, Shri Ganesh H. Naik, Supervisor, with effect from 13-11-96 is illegal and unjustified.

2. The Party II is directed to pay to Party I monetary compensation of Rs. 1,25,000/- (Rupees one lakh and twenty five thousand only), within two months from the date of publication of Award failing which the same shall carry interest at the rate of 9% p.a.
3. Inform the Government accordingly.

Sd/-
(B. K. Thaly)
Presiding Officer
Industrial Tribunal-cum-
-Labour Court-I

Department of Law & Judiciary

Law (Establishment) Division

Order

File No. 12-11-81/LD/1708

Whereas, the Government vide Notification No. 12-11-87/LD dated 15-02-1988, published in the Official Gazette, Series II No. 48 dated 25-02-1988, appointed Advocate Shri Ubaldino C. Menezes Gama (hereinafter called as the "Applicant") as a Notary for a period of three years in and throughout the area of Mormugao Judicial Senior Division with effect from 3-2-1988;

And whereas the Government vide Certificate of Practice dated 15-02-1988 has certified that the Applicant is authorized to practice as a Notary for a period of 3 years from 03-02-1988 in and throughout the area of Mormugao Judicial Senior Division;

And whereas the Applicant had renewed his Certificate of Practice as a Notary for subsequent 4 terms i.e. upto 02-02-2005 and period of validity of the Certificate of Practice dated 07-04-2000 issued to the Applicant expired on 03-02-2005;

And whereas the Applicant did not get his Certificate of Practice renewed even after the expiry of the period of validity of the said Certificate of Practice on 03-02-2005 as required by sub-section (2) of Section 5 of the Notaries Act, 1952 (Central Act 53 of 1952) (hereinafter called as the "said Act");

And whereas the Applicant has failed to get his Certificate of Practice renewed;

Now, therefore, in pursuance of clause (f) of Section 10 of the said Act, the Government of Goa hereby removes from the Register maintained by it under Section 4 of the said Act, the name of the Applicant entered as a Notary.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Law-Estt.).

Porvorim, 8th August, 2014.

Order

No. 1/6/2014-LD(Estt.)/1695

Government of Goa is pleased to accept the resignation of Shri Prashant N. Kamat, as Government Counsel in those cases before the Revenue Courts and Judicial and Quasi Judicial Authorities with effect from 13-06-2014. However, Shri Kamat will remain on the panel of the Government only to defend the cases pertaining to Land Acquisition before District Court (South Goa).

Shri Prashant N. Kamat shall return all the briefs pending before the Revenue Courts and Judicial and Quasi Judicial Authorities with him if any, to the concerned Departments directly under intimation to this Department.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Law-Estt.).

Porvorim, 7th August, 2014.

Department of Personnel

Order

File No. 13/10/2014-PER/4315

Government of Goa is pleased to grant extension in service to Shri G. P. Nathan, Protocol Assistant, Goa Sadan, New Delhi beyond the date of his superannuation for a period of one year w.e.f. 01-08-2014 to 31-07-2015.

The extension is subject to termination without assigning any reason at any time during the period of extension.

By order and in the name of the Governor of Goa.

R. Aga, Under Secretary (Per-II).

Porvorim, 28th July, 2014.

Order

File No. 12/1/2013-PER (A)/4375

Smt. Maria Wanda Sequeira, Office Superintendent (Outside Secretariat), Directorate of Women and Child Development, Panaji is hereby transferred and posted to the Directorate of Technical Education, Porvorim Goa in public interest.

Smt. Maria Wanda Sequeira, Office Superintendent should report to the Directorate of Technical Education, Porvorim, Goa and submit compliance report to this Department.

R. Aga, Under Secretary (Per-II).

Porvorim, 31st July, 2014.

Order

File No. 7/5/74-PER Vol. (IV)/4333

Consequent upon the retirement on superannuation of Dr. V. N. Jindal, Dean, Goa Medical College, Bambolim w.e.f. 31-07-2014 (a.n.), Dr. Pradeep Naik, holding the post of Professor & Head, Department of Ophthalmology is hereby appointed to the post of Dean, Goa Medical College on officiating basis with immediate effect in addition to his own duties until further orders or till the post is filled on regular basis whichever is earlier.

By order and in the name of the Governor of Goa.

R. Aga, Under Secretary (Personnel-II).

Porvorim, 30th July, 2014.

Order

File No. 19/15/2014-PER/4337

In pursuance to Government of India, Ministry of Home Affairs, New Delhi, Order No. 14016/11/2014-UTS-I dated 02-06-2014, Shri Ajit, IAS (Probationer) (2013) allotted to AGMUT Cadre is hereby appointed as a Assistant Collector (Trainee) w.e.f. 07-07-2014 and posted to North Goa District respectively for District Training.

Shri Ajit, IAS (Probationer) joined on 07-07-2014 (Monday) (b.n.) in Goa Administration for the District Training.

By order and in the name of the Governor of Goa.

R. Aga, Under Secretary (Personnel-II).

Porvorim, 30th July, 2014.

Order

File No. 22/8/2007-PER/4271

The Governor of Goa is pleased to transfer the following IPS and Senior Scale Officers of Goa Police Service, with immediate effect in public interest:-

Sl. No.	Name and designation	Present posting	Transferred and posted as
1	2	3	4
1. Shri Vijay Singh (IPS) 2005		S.P., South Addl. charge (1) S. P. (PCR) South	S.P., Special Investigation Team Addl. charge (1) S. P. Foreigners Regional Registration Officer.
2. Shri Atmaram V. Deshpande (IPS)		Principal, PTS, Valpoi Addl. charge (1) S. P. (Training) (2) Commdt. 2nd IRBN	Principal, PTS, Valpoi Addl. charge (1) S.P. (Training) (2) S.P. (Legal & Vigilance).
3. Shri Vishram Borkar (GCS)		S.P. (Head Qtrs) Addl. charge (1) S.P. (M.T.) (2) S.P. (Legal & Vigilance) (3) Dy. Commdt. (HG & Civil Defence)	S.P. (Head Qtrs) Addl. charge (1) S.P. (Motor Transport) (2) Dy. Commdt. (HG & Civil Defence).
4. Shri Shekhar M. Prabhudesai (GCS)		S.P. (Security) Addl. charge (1) S.P. (FRRO)	S.P. (South) Addl. charge (1) S.P. (PCR), South.
5. Shri Francis A. M. Fernandes (GCS)		Dy. S. P., SPCR Addl. charge (1) Dy. Commdt. 1st IRBN (2) SCRB	On promotion posted * Commdt. 3rd IRBN * He shall continue to hold the present charges till the replacement is given.
6. Shri Vaman P. Tari (GCS)		* Dy. S.P., Coastal Security Addl. charge (1) Dy. S.P., ANC (2) Dy. Commdt HG & Civil Defence	On promotion posted as * S.P. (Security) Addl. charge * Commdt. 2nd IRBN * He shall continue to hold the present charges till the replacement is given.
7. Shri Umesh Y. N. Gaonkar (GCS)		SDPO, Porvorim	On promotion posted as * S.P. Special Branch * He shall continue to hold the present charges till the replacement is given.

All the above officers shall complete the process of handing over/taking over within 3 days and submit compliance.

By order and in the name of the Governor of Goa.

R. Aga, Under Secretary (Personnel-II).

Porvorim, 21st August, 2014.

Order

File No. 13/5/2013-PER/4342

Government of Goa is pleased to grant further extension in service to Shri Shyamsunder Korgaonkar, Commissioner of Commercial Taxes beyond the date of his superannuation for a period of five months w.e.f. 01-08-2014 to 31-12-2014.

The extension is subject to termination without assigning any reason at any time during the period of extension.

By order and in the name of the Governor of Goa.

R. Aga, Under Secretary (Per-II).

Porvorim, 31st July, 2014.

Order

File No. 5/124/88-II/PHD/Part 5/4335

Government of Goa is pleased to grant extension in service to Dr. V. N. Jindal, Ex-Dean, GMC, Bambolim-Goa beyond the date of his superannuation for a period of one year w.e.f. 01-08-2014 to 31-07-2015 as Professor in the Department of Neurosurgery.

The extension is subject to termination without assigning any reason at any time during the period of extension.

By order and in the name of the Governor of Goa.

R. Aga, Under Secretary (Per-II).

Porvorim, 31st July, 2014.

◆◆◆
Department of Revenue

Order

No. 22/24/2013-RD

Whereas, the Government of Goa, vide Notification No. 22/24/2013-RD dated 01-10-2013, issued under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Act 1 of 1894) (hereinafter referred to as the "said Act"), and published in the Official Gazette, Series II No. 28 dated 10-10-2013, notified that the land specified in the Schedule thereof (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. Land Acquisition for construction of Modern Fire Station at Bicholim (hereinafter referred to as the "said public purpose");

And whereas, the Government of Goa considered the report made by the Collector under sub-section (2) of Section 5A of the said Act and on being satisfied that the said land is needed for the said public purpose, vide Notification No. 22/24/2013-RD dated 19-02-2014, issued under Section 6 of the said Act, and published in the Official Gazette, Series II No. 47 dated 20-02-2014, declared that the said land is required for the said public purpose.

Now, therefore, in exercise of the powers conferred by Section 7 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Government of Goa hereby directs the Collector, North Goa District, Panaji-Goa to take the order for acquisition of the said land.

By order and in the name of the Governor of Goa.

Ashutosh Apte, Under Secretary (Revenue-I).

Porvorim, 11th August, 2014.

Notification

No. 23/34/2013-RD

Whereas, by Government Notification No. 23/34/2013-RD dated 02-12-2013 published at Series II, No. 37 of the Official Gazette dated 12-12-2013 and in two local newspapers, namely, "Herald" and "Goa Doot" both dated 11-12-2013, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act"), that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land), was needed for public purpose, viz. Land Acquisition for construction of bridge at Balli in Quepem Constituency on Balli-Fatorpa MDR road at Balli-Quepem.

And whereas, the Government of Goa (hereinafter referred to as "the Government") after considering the report made under sub-section (2) of Section 5-A of the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, therefore, the Government hereby declares under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

The Government also hereby appoints under clause (c) of Section 3 of the said Act, the Special Land Acquisition Officer, GSIDC Ltd., Panaji-Goa,

to perform the functions of the Collector for all proceedings hereinafter to be taken in respect of the said land.

A plan of the said land can be inspected at the office of the Special Land Acquisition Officer, GSIDC Ltd., Panaji-Goa, till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Quepem

Village: Balli

Survey No./ Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
74/1 part	Krishna Nilu Phal Dessai.	370
74/2 part	Dattu Nilu Naik Dessai.	180
	Balsu Vithobha Phal Dessai.	
	Pundhalik Vithobha Phal Dessai.	
	Vithal Gurguro Phal Dessai.	
	Parnanand S. Audhi.	
	Suresh S. Audhi.	
	Krishna Nilu Phal Dessai.	
	Premavati Vishnu Phal Dessai.	
	O.R. House belongs to:	
	Balsu Vithobha Phal Dessai.	
74/4 part	Dattu Nillu Naik Dessai.	360
	Balsu Vithobha Phal Dessai.	
	Narayan Manju Phal Dessai.	

1	2	3
	Pundhalik Vithobha Phal Dessai.	
	Vithal Gurguro Phal Dessai.	
	Krishna Nilu Phal Dessai.	
	Premavati Vishnu Phal Dessai.	
	O.R. House belongs to:	
	Jayashri Krishna Phal Dessai	
	& Sunanda Alies Chandraicala	
	Vinayak Sawant.	
78/1 part	Raghuvir Pandhari Sinai	258
	Audi.	
78/2 part	Prabhakar Jiva Phal Dessai.	437
	Rama Krishna Phal Dessai.	
	Prasad Guno Phal Dessai.	
	Govind Modu Dessai.	
	Tulshi Laxman Dessai.	
	Boundaries:	
	North: Road, Nallah.	
	South: S. No. 74/1 & 2, Nallah.	
	East : S. No. 74/1 & 4.	
	S. No. 78/1 & 2.	
	West : Road.	
	Total: 1605	

By order and in the name of the Governor of Goa.

Anju S. Kerkar, Under Secretary (Revenue-II).
Porvorim, 7th August, 2014.

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